



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

Stop 9612

March 7, 2019

Ms. Emma Best
MuckRock News
DEPT MR 60413
411A Highland Ave.
Somerville, MA 02144-2516

Re: Appeal, Freedom of Information Act Request No. 18-03106-FOIA, designated on appeal as No. 19-00063-APPS

Dear Ms. Best:

This responds to your Freedom of Information Act (FOIA) appeal of the FOIA Officer's decision concerning your September 10, 2018 FOIA seeking "materials relating to Earl Brian's June, 1993 settlement with the Securities and Exchange Commission on charges of inflating Financial News Network's revenue by billions of dollars." By letter dated October 9, 2018, the FOIA Officer informed you that he could neither confirm nor deny the existence of any such SEC documents, but that if such documents exist they would be exempt from disclosure under FOIA Exemptions 6 and 7(C).¹

On October 25, 2018, you filed this appeal challenging the FOIA Office's decision to neither confirm nor deny the existence of responsive records relating to Earl Brian's settlement with the Commission. I have considered your appeal and am remanding this matter to the FOIA Office to search for responsive documents. Because it is a matter of public record that the Commission entered into a settlement with Earl Brian in connection with an investigation in 1993, it was not necessary to decline to confirm or deny the existence of responsive documents. On remand, the FOIA Office will conduct a search for responsive documents and, to the extent it locates responsive documents, determine the applicability of any FOIA exemptions to the materials.

¹ Under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), information in "personnel and medical files and similar files" may be withheld when its disclosure "would constitute a clearly unwarranted invasion of personal privacy." FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), authorizes the withholding of records compiled for law enforcement purposes if disclosure "could reasonably be expected to constitute" an invasion of personal privacy.

You may contact Mr. Ray McInerney, FOIA Branch Chief, at 202-551-7900, regarding the status of the file on remand.

For the Commission
by delegated authority,

A handwritten signature in black ink, appearing to read 'R. Humes'.

Richard M. Humes
Associate General Counsel